



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 11, 2018

CBCA 6202-FEMA

In the Matter of FACILITY PLANNING AND CONTROL,
STATE OF LOUISIANA

Richard F. Zimmerman, Jr., Randal J. Robert, and Julie M. McCall of Kantrow, Spaht, Weaver & Blitzer, Baton Rouge, LA, counsel for Applicant.

Lynne Browning, Assistant Deputy Director, Danielle Aymond, Executive Counsel, Carla Richard, Executive Officer, and Jaron Herd, Appeals Manager, Governor's Office of Homeland Security and Emergency Preparedness, Baton Rouge, LA, appearing for Grantee.

Charles Schexnaildre and Frank E. Bruscato, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Baton Rouge, LA; and Maureen Dimino, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the arbitration panel consisting of Board Judges **SOMERS** (Chair), **LESTER**, and **O'ROURKE**.

On July 20, 2018, applicant, Facility Planning and Control, State of Louisiana, (FP&C) submitted a request for arbitration of a determination made by the Federal Emergency Management Agency (FEMA). The request arises out of FEMA's denial of certain expenses requested by FP&C for additional repairs to Bienville Hill, an eight-story former student dormitory located on the campus of the University of New Orleans, which was damaged as a result of Hurricane Katrina. FP&C seeks the requested public assistance funding pursuant to section 601 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, 164, and its implementing regulation, 44 CFR 206.209 (2018). The project worksheet (PW) 5722, version (V)9, in dispute is for the added costs of

additional damage not identified in previous PWs for damage to Bienville Hall.

FP&C initially appealed FEMA's determination pursuant to 44 CFR 206.206. After the Regional Administrator denied its first appeal, FP&C filed its arbitration request in lieu of filing a second level appeal under 44 CFR 206.209.

FEMA has moved to dismiss the request, asserting that we lack jurisdiction. FEMA argues that (1) by allowing this arbitration to go forward, we would be interpreting 44 CFR 206.209 contrary to the language and intent of Congress and FEMA, and (2) 44 CFR 206.209(d)(1) forces an applicant to choose either arbitration or the standard appeals process under section 206.206.

For the reasons set forth in our previous decisions in *Plaquemines Parish Government*, CBCA 5933-FEMA, 18-1 BCA ¶ 36,966, and *Baldwin County Board of Supervisors*, CBCA 2018-FEMA, 10-2 BCA ¶ 34,504, we reject FEMA's arguments. The analysis presented in those decisions gives full effect to the applicable provisions of the regulations as a whole, and is both cogent and persuasive. *Plaquemines Parish*, 18-1 BCA at 180,095. FEMA has presented nothing new in the current motion to dismiss. We find that FP&C has properly filed an application for arbitration in lieu of continuing its appeal. The Board has authority to entertain its application. For these reasons, FEMA's motion to dismiss is denied.

Jerí Kaylene Somers
JERI KAYLENE SOMERS
Board Judge

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge

Kathleen J. O'Rourke
KATHLEEN J. O'ROURKE
Board Judge